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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,791

07/18/2007

Robert Charles Rees

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EXAMINER

DUFFY, BRADLEY

ART UNIT

PAPER NUMBER

1643

NOTIFICATION DATE

DELIVERY MODE

02/27/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

indocket@btlaw.com

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/594,791

Examiner

BRADLEY DUFFY

Applicant(s)

REES ET AL.

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 09 December 2008 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other See Continuation Sheet.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given no new time period if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the entire corrected amendment must be resubmitted.
2. Applicant is given one month, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the corrected section of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or  
Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

/Brad Duffy/ Examiner, Art Unit 1643

571-272-9935

Continuation of 1(c) Other: The amendment filed on December 9, 2008, is considered non-compliant because it fails to meet the requirements of 37 CFR § 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003).

The amendment to the specification is non-compliant because it attempts to replace individual words and sentences within a paragraph instead of replacing the paragraph in its entirety by showing the changes that have been made relative the immediate prior versions of those paragraphs as required by 37 CFR § 1.121.

37 CFR § 1.121 provides for amendments to the specification that are limited to the substitution of existing paragraphs by amended versions thereof, provided that the changes that have been made relative to their immediate prior versions are marked in the prescribed manner, the insertion of new paragraphs, and the deletion of entire paragraphs from the disclosure. Not provided for by the rule are amendments to sentences or words within a paragraph such as has been provided.

Continuation of 4(e) Other: The claim amendment is non-compliant because the amendment makes amendments to the claims without properly demarcating the changes as required by 37 CFR § 1.121. Notably, the claims were amended by a preliminary amendment filed 9/29/06 and the amendment filed 12/09/08 does not properly demarcate the changes made relative to this immediate prior version as required by 37 CFR § 1.121. Furthermore, it is noted that the claim amendment filed 12/9/08 contains incorrect status identifiers for some of the claims (See e.g., claim 1 which has been withdrawn).

Briefly, the revised amendment practice now requires a listing of all claims beginning on a separate sheet. Each claim ever presented must be included in the listing of claims together with a single proper status identifier in parentheses. The permissible status identifiers include: "original", "currently amended", "canceled", "withdrawn", "previously presented", "new", and "not entered". The text of all pending claims, including withdrawn claims, must be presented. Markings to show only the changes made in the current amendment relative to the immediate prior version should be included with the text of all currently amended claims, including withdrawn claims that are amended. Added text must be shown by underlining the added text. Generally deleted text must be shown by strikethrough (e.g., ~~strikethrough~~); or if the strikethrough cannot be easily perceived, and for deletion of five or fewer characters, the deleted text may be marked by the inclusion of deleted text in double brackets (e.g., [[444]]). The text of "canceled" and "not entered" claims must not be presented; and consecutive "canceled" or "not entered" claims may be grouped together in one line (e.g., Claims 1-11 (canceled); Claims 51-62 (not entered)).

Additionally, applicant is advised that because the amendment filed 12/09/08 is non-compliant and has not been entered, claims 32 and 33 which were first presented in this amendment should properly be identified with the status identifier "not entered", and presented without any claim text in any subsequent amendments. See MPEP 714 which states: "The status identifier (not entered) is used for claims that were previously proposed in an amendment (e.g., after-final) that was denied entry." and "Canceled and not entered claims must be listed by only the claim number and status identifier, without presenting the text of the claims."

Accordingly, if Applicant wishes to present any new claims for consideration, then such claims should be numbered starting consecutively after the claim with the highest number previously presented, in this case claim 34 with the status of "new" and without claim markings. See also 37 CFR § 1.126 which states: "When claims are added, they must be numbered by the applicant consecutively beginning with the number next following the highest numbered claim previously presented (whether entered or not)".

Only the corrected section of the non-compliant amendment must be resubmitted (in its entirety), e.g., the entire "Amendments to specification" and "Amendments to claims" sections of applicant's amendment must be re-submitted. 37 CFR § 1.121(h).

/Stephen L. Rawlings/  
Primary Examiner, Art Unit 1643